



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 21st day of January, 1997

SERVED: January 21, 1997

Joint Application of

DELTA AIR LINES, INC.

and

AEROVIAS de MEXICO, S.A.

for statements of authorization under Parts
207 and 212 of the Department's regulations
to engage in code-share operations (Los Angeles-
Guadalajara, Los Angeles-Mexico
City, New York (JFK)-Mexico City, beyond
Atlanta and Dallas/Ft. Worth, and beyond Mexico City)

Undocketed

**ORDER GRANTING STATEMENTS OF AUTHORIZATION AND AFFIRMING
STAFF ACTION**

Summary

By this order we grant the petition for review of staff action filed by American Airlines, Inc., and on review, affirm the November 22, 1996, action of the Director, Office of International Aviation, granting authority to Delta Air Lines, Inc., and Aerovias de Mexico (Aeromexico) to expand their codeshare services in the U.S.-Mexico market through January 21, 1997. We also grant the balance of the carriers' applications to continue those services through November 22, 1997.

Background

By joint application filed October 25, 1996, Delta and Aeromexico applied for statements of authorization under Parts 207 and 212 of the Department's regulations to:

- (a) display each other's airline designator codes on each other's flights operated in the Los Angeles-Guadalajara, Los Angeles-Mexico City, and New York (JFK)-Mexico City markets;
- (b) display Aeromexico's code on flights operated by Delta between Atlanta and

Washington, D.C., and between Dallas/ Ft. Worth and Austin, Texas, for Aeromexico traffic moving between Mexico and the United States; and

(c) display Delta's code on Aeromexico flights between Mexico City and Acapulco and Monterrey, Mexico carrying Delta traffic between the United States and Mexico.

In conjunction with their applications, Delta and Aeromexico also filed the code-share agreement that governs their operations.

On November 22, 1996, the Director, Office of International Aviation, acting under assigned authority, granted the requested statements of authorization for a period of 60 days, through January 21, 1997.¹ American had opposed the application, arguing that it was unfair for the Department not to require additional evidentiary material in this case, while requiring extensive material in the American/TACA Group code-share case. Trans World Airlines also opposed the application raising competitive issues.² Finally, Northwest and Alaska filed answers stating that they did not oppose the applications but requested that initial approval be limited to 60 days while the Department continued its efforts to resolve issues related to codeshare operations proposed by Northwest and Alaska in certain U.S.-Mexico city-pair markets. In granting the authority, the Director rejected American's objection, stating that as set forth in Order 96-11-12, it is the Department's policy to consider codeshare applications on a case-by-case basis depending upon the circumstances of each case. Based on that policy, the Director concluded that while the Department had determined additional information was necessary in the American/TACA Group case, no additional information was necessary to complete consideration of the Delta/Aeromexico applications at issue.

The Director deferred action on the balance of the carriers' applications while we continued our efforts to resolve the issues with the Mexican government involving the codeshare services proposed by Northwest and Alaska in the U.S.-Mexico market.

Subsequent to the Director's action, on December 15, 1996, the Mexican government approved the Northwest/Alaska codeshare services for a period of six months.

¹Those approvals were confirmed by Order 96-12-8, December 11, 1996. In addition, Aeromexico had also concurrently filed an exemption application (Docket OST-96-1896) for the underlying authority to serve the additional U.S. cities included in the proposed codeshare with Delta. That application was not contested and the authority was orally granted for a period of one year on November 22, 1996. See Order 96-12-38.

² The Director did not adopt TWA's position. TWA did not petition for review of the Director's decision and the issues it raised are therefore not involved in this order.

Petition for Review

On December 11, 1996, American filed a petition for review of the staff's action approving the Delta/Aeromexico reciprocal codeshare services. American argues that the Department should vacate the staff's action and order Delta and Aeromexico to file the same type of evidence that the Department required in the American/TACA Group Reciprocal Code-Sharing Services Proceeding. American reiterates its arguments that the Director's failure to seek such additional information reflects an inconsistent Department policy with respect to consideration of codesharing applications. In particular American notes that the U.S.-Mexico market is restricted, limiting the number of carriers that may serve to one carrier in any single city-pair market, whereas the markets in Central America where American proposes its codeshare service are open entry. In addition, American argues that the Director failed to take into consideration the common control of Aeromexico and Compania Mexicana de Aviacion, S.A. de C.V. (Mexicana), another Mexican airline, which could affect competition in the markets at issue, particularly since United and Mexicana recently filed an application for broad codesharing services. (Docket OST-96-1988, filed November 26, 1996). In these circumstances, American contends that it is arbitrary and capricious for the Department to impose onerous requirements on American while summarily approving the Delta/Aeromexico codeshare. In addition, American argues that the Delta/Aeromexico and United/Mexicana codeshare applications should be consolidated for contemporaneous consideration to consider the competitive implications of the proposed codeshare arrangements.

Delta and Aeromexico filed answers opposing American's petition. Delta contends that American's petition is its third attempt to seek reconsideration of the Department's evidentiary requirements on the American/TACA Group alliance and that its petition as well as its request for consolidation of the Delta/Aeromexico and United/Mexicana cases should be rejected. Delta argues that contrary to American's allegations, the Delta/Aeromexico arrangement is not comparable in terms of scope or the country/city-pairs that they propose to serve to warrant comparable treatment. Specifically, Delta states that the Delta/Aeromexico codeshare represents a modest expansion of an existing relationship involving a handful of U.S.-Mexico routes on which there is significant alternative nonstop and one-stop competing service. On the other hand, Delta argues, the American/TACA Group alliance involves American and seven airlines serving all seven countries on routes where there is little or no effective competition. Furthermore, Delta argues that unlike American's position in Central America, Delta is not the dominant carrier in the Mexico market. Given the significantly different market and competitive factors as well as scope of the alliances at issue, Delta contends that the Department and the Department of Justice correctly determined that the limited Delta/Aeromexico alliance would not have a negative impact on competition.

Aeromexico similarly argues that American's petition should be rejected, but responds specifically to American's argument that because Aeromexico and Mexicana are commonly controlled that they are the same airline. Aeromexico argues that the carriers have separate managements, and are operated under the regulation of the Mexican government to promote competition in domestic and international markets and that they compete directly in many U.S.-Mexico markets. It maintains that it intends to compete strongly against Mexicana, Delta

and United in the codeshare markets just as it currently competes with Delta in the Atlanta-Mexico City and Dallas/Ft. Worth-Mexico City markets, markets in which the two carriers currently code share. Finally, it contends that the U.S.-Mexico market is one of the most competitive in the world with multiple U.S. and Mexican airlines serving, and that the codeshare arrangement affords it the opportunity to increase service, thereby providing increased competition in the market.

Decision

We have decided to grant American's petition for review and, on review, we will affirm the action of the Director, Office of International Aviation, approving the codeshare services. We will also deny American's request that we consolidate the Delta/Aeromexico and United Mexicana codeshare applications for contemporaneous consideration. We find that the Director correctly determined that the Delta/Aeromexico applications raised no issues that warranted any additional information or investigation, and properly concluded that they should be judged on their merits and should be approved.

The thrust of American's petition is that the Director erroneously determined that no additional information from the applicants was necessary for the Department to complete its consideration of the application, and that by failing to require such information, the Director has not evenhandedly applied consistent criteria for codeshare applications. We disagree.

We made clear our policy with respect to codeshare applications in our order on reconsideration of the evidentiary requirements in the American/TACA Group codeshare case, Order 96-11-12. In that order, we stated that it is our policy to consider codeshare applications individually based on the circumstances presented in each case. Although American had claimed that we had never requested comparable information on any other codeshare proposal, we noted that we had in fact sought additional information with respect to certain codeshare alliances including the United/Lufthansa codeshare and the America West/British Airways codeshare. Contrary to American's arguments, there are significant differences between the circumstances of the American/TACA Group case and the Delta/Aeromexico case that distinguish the two cases and have caused us to decide to seek additional information in one and not in the other.

In regard to the American/TACA Group application, we concluded that the arrangement presents serious competitive issues that need investigation before we can conclude whether approval will be consistent with the public interest. In particular we noted the dominant positions held by American and the foreign carriers involved in the alliance in the Central American market. Those carriers were the largest carriers in the markets at issue, and American was the only U.S. airline with a hub at Miami, the dominant gateway for U.S.-Central America service. We also noted the applicants' plan for a large scale alliance and their intention to move toward an integration of their services which could hinder competition between American and the TACA Group carriers.

In contrast, the U.S.-Mexico market is very competitive. No airlines or gateways have dominant positions in the market as is the case in Central America. Indeed, eleven U.S. carriers serve the market from numerous gateways and several U.S. carriers provide nonstop service from their hubs--American from Dallas/Ft. Worth, Miami and Chicago as well as Los

Angeles; America West from Phoenix and Las Vegas; Continental from Houston and Newark; Delta from Atlanta and Los Angeles; Northwest from Detroit, Minneapolis, and Memphis; TWA from St. Louis; United from Washington, Chicago and San Francisco; and USAir from Baltimore.³ Furthermore, the city-pair markets at issue are competitive with nonstop service by at least four airlines. Moreover, the carriers have not proposed a broad scale integration of their services but rather have entered into a blocked space/codeshare arrangement. Under a blocked-space agreement, each airline independently prices and sells its seats on each flight, thereby providing competition between the codeshare. Cf. Order 96-11-1 at 15. Finally, the Department of Justice has reviewed the proposed operations and found no competitive reasons why they should not be approved. Given the factors noted above, we agree with that assessment. While American is correct that there are bilateral limitations on services in the U.S.-Mexico market, double designation is generally available in all markets and, given the large number of carriers serving and number of gateways served, alternative nonstop or one-stop services are available for cities throughout the United States, resulting in a wide range of competitive services.⁴

Against this background, we conclude that the Director's assessment that sufficient information was available to consider the Delta/Aeromexico was correct and fully consistent with our policy as reiterated in Order 96-11-12. Therefore, we will affirm his November 22, 1996 action granting the application for a limited period and deny American's request that we require the carriers to file additional information with respect to their code-share operations.

We will also deny American's request that the Delta/Aeromexico and United/Mexicana codeshare applications be consolidated for contemporaneous consideration. Although American's argument is that common control of the Mexican airlines raises competitive issues that require consolidation, the record in this case indicates that Delta has an agreement with only one Mexican airline, not both. Moreover, the carriers have stated on the record that they are separately managed and specifically regulated by the Mexican government in order to promote competition in both domestic and international markets. American has presented no persuasive evidence to the contrary. Given these circumstances, along with the factors cited above, we are not persuaded that there are competitive concerns that would warrant contemporaneous consideration of the two codeshare applications. We are currently reviewing the pleadings in the United/Mexicana application and will consider American's comments to that arrangement in the context of that case.

Disposition of Balance of Delta/Aeromexico Application

As noted above, the Director, Office of International Aviation, granted the Delta/Aeromexico application for period of 60 days and deferred action on the balance while we worked to resolve certain issues related to codeshare services proposed by Northwest and Alaska Airlines in the

³ In addition, two U.S. commuter carriers operate in several U.S.-Mexico markets.

⁴ See Order 96-11-25, regarding U.S.-Mexico authority in which we noted that while the U.S.-Mexico market remained limited to one carrier per city-pair market, the U.S. and Mexican governments had been very forthcoming in granting requests for double designation in numerous U.S.-Mexico city-pair markets. Order 96-11-25 at 3.

U.S.-Mexico market. In December 1996, the Mexican government approved the proposed Northwest/Alaska codeshare operations for a period of six months.

We have decided to extend the carriers' authorizations through November 22, 1997, thus granting their applications for a period of one year, subject to our standard codeshare conditions.

We find that approval of the balance of the carriers' application is consistent with the public interest. The proposed codeshare operations will enable the carriers to expand services under their own codes, increasing the service options available to the public and promoting competition with other carriers serving the U.S.-Mexico market. Both carriers will be able to hold out more services in the transborder markets at issue, Delta will be able to offer service beyond Mexico City to other points in Mexico, and Aeromexico will offer services beyond Dallas/Ft. Worth and Atlanta to interior U.S. points. While there are no specific provisions in the U.S.-Mexico agreement governing codeshare operations, Mexico has previously approved codeshare operations proposed by Delta and Aeromexico as well as between other U.S. and Mexican carriers. In these circumstances, we believe that sufficient reciprocity exists to warrant approval of the proposed Delta/Aeromexico services.

We recognize that our approval here goes beyond the period for which the Mexican government has approved the Northwest/Alaska codeshare operations. We take this action with the full expectation that the Mexican government will extend its approval of the Northwest/Alaska operations. Should such approval not be given, we reserve the right to review our decision here and to modify it accordingly should circumstances warrant.

Consistent with our standard practice in codeshare cases, we will subject approval of the codeshare operations to compliance with the Department's rules and regulations concerning codeshare arrangements as well as our standard conditions for codeshare operations.

ACCORDINGLY,

1. We grant the petition of American Airlines, Inc., for review of the staff action, and on review, we affirm the action of the Director, Office of International Aviation granting the joint applications of Delta and Aeromexico to engage in codesharing operations in the U.S.-Mexico market through January 21, 1997;
2. We grant Delta Air Lines, Inc., a statement of authorization under Part 207 of the Department's regulations, and Aerovias de Mexico, S.A. a statement of authorization under Part 212 of the Department's regulations, to engage in codesharing operations in the Los Angeles-Guadalajara, Los Angeles-Mexico City, and New York-Mexico City markets;
3. We grant Delta Air Lines, Inc., a statement of authorization under Part 207 of the Department's regulations to place Aerovias de Mexico S.A.'s airline designator code on Delta's flights between Atlanta and Washington, D.C. and Dallas/Ft. Worth and Austin, Texas, carrying Aeromexico's traffic moving between the Mexico and the United States;

4. We grant Aerovias de Mexico, S.A. a statement of authorization under Part 212 of the Department's regulations, to place Delta Air Lines, Inc.'s airline designator code on Aeromexico flights between Mexico City and Acapulco and Monterrey, Mexico carrying Delta's traffic moving between the United States and Mexico;
5. The authorities granted in ordering paragraphs 2, 3, and 4, above, are effective immediately and shall remain in effect through November 22, 1997;
6. In the conduct of the services authorized by this order we expect Delta Air Lines, Inc. and Aerovias de Mexico, S.A. to comply with 14 CFR 399.88 of the Department's regulations and any amendments to the Department's regulations concerning codeshare arrangements that may be adopted;
7. The codeshare operations authorized by this order are subject to the condition that the foreign air transportation be sold in the name of the carrier holding out service in computer reservation systems and elsewhere, that the carrier selling such transportation accept all obligations established in the contract of carriage with the passenger (*i.e.*, the ticket), and that where applicable the operator shall not permit the code of its U.S. codesharing partner to be carried on any flight that enters, departs, or transits the airspace of any area for whose air space the Federal Aviation Administration has issued a flight prohibition;
8. We may amend, modify, or revoke this authorities granted by this order at any time at our discretion without notice or hearing; and
9. We will serve this order on American Airlines, Inc., Delta Air Lines, Inc., Northwest Airlines, Inc., Alaska Airlines, Inc., United Air Lines, Inc., Trans World Airlines, Inc., Aerovias de Mexico, S.A., Compania Mexicana de Aviacion, S.A. de C.V., the Ambassador of Mexico in Washington, D.C., the Department of State (Office of Aviation Negotiations), and the Federal Aviation Administration (AFS-200).

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

*An electronic version of this order is available on the World Wide Web at
<http://www.dot.gov/general/orders/aviation.html>.*